

ARKANSAS SUPREME COURT

No. CR 06-204

NOT DESIGNATED FOR PUBLICATION

PHILIP PARMLEY
a/k/a Phil Parmley
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered April 27, 2006

PRO SE MOTION FOR EXTENSION OF TIME
TO FILE APPELLANT'S BRIEF [CIRCUIT
COURT OF GARLAND COUNTY, CR 2001-584-
I, HON. JOHN H. WRIGHT, JUDGE]

APPEAL DISMISSED; MOTION MOOT

PER CURIAM

In 2004, appellant Philip Parmley, who is also known as Phil Parmley, was found guilty by a jury of possession of drug paraphernalia with intent to manufacture and sentenced as a habitual offender to 240 months' imprisonment. The Arkansas Court of Appeals affirmed. *Parmley v. State*, CACR 04-692 (Ark. App. March 2, 2005). The court's mandate was issued on March 22, 2005.¹

On August 11, 2005, appellant filed in the trial court a *pro se* petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1 seeking to vacate the judgment. The petition was dismissed, and appellant has lodged an appeal from that order in this court. He now seeks an extension of time to file the appellant's brief.

As the Rule 37.1 petition filed in the trial court was not timely filed, the appeal is dismissed. The motion is moot. This court has consistently held that an appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail.

¹After the mandate was issued, appellant filed in this court a motion to file a belated motion to accept certification of the appeal. The motion, which was filed under the docket number assigned to the direct appeal of the judgment, was denied on the ground that there is no provision in our rules for a belated motion to accept certification of an appeal after the mandate of the Arkansas Court of Appeals has been issued. *Parmley v. State*, CACR 04-692 (Ark. May 26, 2005) (*per curiam*).

Pardue v. State, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (*per curiam*); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (*per curiam*).

Criminal Procedure Rule 37.2(c) requires that a petition for postconviction relief must be filed within sixty days of the date the mandate was issued. The time limitations imposed in Ark. R. Crim. P. 37.2(c) are jurisdictional in nature, and the circuit court may not grant relief on an untimely petition. *Benton v. State*, 325 Ark. 246, 925 S.W.2d 401 (1996) (*per curiam*). Appellant's petition was filed 142 days after the mandate was issued and was thus subject to summary dismissal.

Appeal dismissed; motion moot.